

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 17-Apr-2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Norfolk District, NAO-2008-00707-kab-JD1

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : VA - Virginia
County/parish/borough: York
City: Seaford
Lat: 37.190976
Long: -76.440353
Universal Transverse Mercator: []
Name of nearest waterbody: Chisman Creek
Name of nearest Traditional Navigable Water (TNW): Chisman Creek
Name of watershed or Hydrologic Unit Code (HUC): 02080108

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with the action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION:

☒ Office Determination Date: 17-Apr-2008

☒ Field Determination Date(s): ☐ 15-Apr-2008

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There [] "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There [] "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area:¹

Water Name	Water Type(s) Present
2008-707 125 Lewis PFO Wets	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
2008-707 125 Lewis stream	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs

b. Identify (estimate) size of waters of the U.S. in the review area:

Area:

Linear:

c. Limits (boundaries) of jurisdiction:

based on: 1987 Delineation Manual.

OHWM Elevation: .5 (if known)

2. Non-regulated waters/wetlands:³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

1. TNW

Not Applicable.

2. Wetland Adjacent to TNW

Not Applicable.

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**1. Characteristics of non-TNWs that flow directly or indirectly into TNW****(i) General Area Conditions:**

Watershed size: 136320 acres
 Drainage area: 20 acres
 Average annual rainfall: 40 inches
 Average annual snowfall: inches

(ii) Physical Characteristics**(a) Relationship with TNW:**

- ☒ Tributary flows directly into TNW.
☐ Tributary flows through [] tributaries before entering TNW.
 :Number of tributaries

Project waters are 1 (or less) river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project Waters are 1 (or less) aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial(straight) miles from RPW.

☐ Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:⁵

onsite stream flows into a nontidal portion of an unnamed tributary of Chisman Creek. This tributary becomes tidal (TNW) and then flows into tidal Chisman Creek.

Tributary Stream Order, if known:

Order	Tributary Name
1	2008-707 125 Lewis stream

(b) General Tributary Characteristics:**Tributary is:**

Tributary Name	Natural	Artificial	Explain	Manipulated	Explain
2008-707 125 Lewis stream	X	-	-	-	-

Tributary properties with respect to top of bank (estimate):

Tributary Name	Width (ft)	Depth (ft)	Side Slopes
2008-707 125 Lewis stream	3.5	2.5	2:1

Primary tributary substrate composition:

Tributary Name	Silt	Sands	Concrete	Cobble	Gravel	Muck	Bedrock	Vegetation	Other
2008-707 125 Lewis stream	-	X	-	-	-	X	-	-	-

Tributary (conditions, stability, presence, geometry, gradient):

Tributary Name	Condition\Stability	Run\Riffle\Pool Complexes	Geometry	Gradient (%)
2008-707 125 Lewis stream	relatively stable - banks well vegetated.	-	Meandering	-

(c) Flow:

Tributary Name	Provides for	Events Per Year	Flow Regime	Duration & Volume
2008-707 125 Lewis stream	Seasonal flow	20 (or greater)	flows during the winter and spring. No evidence of whether flow is present in dryer months.	-

Surface Flow is:

Tributary Name	Surface Flow	Characteristics
2008-707 125 Lewis stream	Discrete and confined	-

Subsurface Flow:

Tributary Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2008-707 125 Lewis stream	Unknown	-	-

Tributary has:

Tributary Name	Bed & Banks	OHWM	Discontinuous OHWM ⁷	Explain
2008-707 125 Lewis stream	X	X	-	-

Tributaries with OHWM⁶ - (as indicated above)

			Changes	Destruction			Matted\Absent	Sediment			Sediment		Water	Changes	
--	--	--	---------	-------------	--	--	---------------	----------	--	--	----------	--	-------	---------	--

Tributary Name	OHWM	Clear	Litter	in Soil	Vegetation	Shelving	Wrack Line	Vegetation	Sorting	Leaf Litter	Scour	Deposition	Flow Events	Staining	Plant	Other
2008-707 125 Lewis stream	X	X	-	X	X	-	-	X	X	-	-	X	-	X	X	-

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction:

High Tide Line indicated by:

Not Applicable.

Mean High Water Mark indicated by:

Not Applicable.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Tributary Name	Explain	Identify specific pollutants, if known
2008-707 125 Lewis stream	No obvious visual indications of pollution.	VOCs from roadways (oil, gas), pollutants from air (sulfates and nitrates and heavy metals), pet wastes, agricultural wastes. In close proximity to various industrial sites.

(iv) Biological Characteristics. Channel supports:

Tributary Name	Riparian Corridor	Characteristics	Wetland Fringe	Characteristics	Habitat
2008-707 125 Lewis stream	X	forested - varies.	-	-	X

Habitat for: (as indicated above)

Tributary Name	Habitat	Federally Listed Species	Explain Findings	Fish/Spawn Areas	Explain Findings	Other Environmentally Sensitive Species	Explain Findings	Aquatic/Wildlife Diversity	Explain Findings
2008-707 125 Lewis stream	1	-	-	-	-	-	-	1	Wetlands and waters provide habitat and food for amphibians, reptiles, and possible fish, as well as many species of birds. The flow of organics from this site also provides organics to all downstream waters and wetland ecosystems.

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland Name	Size (Acres)	Wetland Type	Wetland Quality	Cross or Serve as State Boundaries. Explain
2008-707 125 Lewis PFO Wets	.5	PFO	good buffer, therefore relatively good quality.	-

(b) General Flow Relationship with Non-TNW:

Flow is:

Wetland Name	Flow	Explain
2008-707 125 Lewis PFO Wets	Intermittent flow.	-

Surface flow is:

Wetland Name	Flow	Characteristics
2008-707 125 Lewis PFO Wets	Discrete and confined	-

Subsurface flow:

Wetland Name	Subsurface Flow	Explain Findings	Dye (or other) Test
2008-707 125 Lewis PFO Wets	Unknown	-	-

(c) Wetland Adjacency Determination with Non-TNW:

Wetland Name	Directly Abutting	Discrete Wetland Hydrologic Connection	Ecological Connection	Separated by Berm/Barrier
2008-707 125 Lewis PFO Wets	Yes	-	-	-

(d) Proximity (Relationship) to TNW:

Wetland Name	River Miles From TNW	Aerial Miles From TNW	Flow Direction	Within Floodplain
2008-707 125 Lewis PFO Wets	1 (or less)	1 (or less)	Wetland to navigable waters	-

(ii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Wetland Name	Explain	Identify specific pollutants, if known
2008-707 125 Lewis PFO Wets	-	VOCs from roadways (oil, gas), pollutants from air (sulfates and nitrates and heavy metals), pet wastes, agricultural wastes. This site is within close proximity of an oil refinery, a closed landfill, an HRSD facility, and a fly ash dumping site.

(iii) Biological Characteristics. Wetland supports:

Wetland Name	Riparian Buffer	Characteristics	Vegetation	Explain
2008-707 125 Lewis PFO Wets	X	forested - varies	X	forested

Habitat for:

Wetland Name	Habitat	Federally Listed Species	Explain Findings	Spawn Area	Explain Findings	Other Environmentally Sensitive Species	Explain Findings	Aquatic/Wildlife Diversity	Explain Findings
2008-707 125 Lewis PFO Wets	X	-	-	-	-	-	-	X	Wetlands and waters provide habitat and food for amphibians, reptiles, and possible fish, as well as many species of birds. The flow of organics from this site also provides organics to all downstream waters and wetland ecosystems.

3. Characteristics of all wetlands adjacent to the tributary (if any):

All wetlands being considered in the cumulative analysis:

Not Applicable.

Summarize overall biological, chemical and physical functions being performed:

Not Applicable.

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Findings for: 2008-707 125 Lewis PFO Wets, 2008-707 125 Lewis stream

The onsite reach of the tributary has large woody debris, leaf litter, leaf packs, sediment dams and sediment depositional areas, is meandering and is host to a wide variety of wildlife, including deer, raccoons, foxes, amphibians, and reptiles. The approximate channel volume is 1750 cubic feet. The wetlands and tributary serve to retain floodwaters and filter out sediments and pollutants from runoff (particularly from adjacent roadways and railroad). They reduce downstream particulate loads and improve surface water quality. They enhance decomposition and mobilization of metals. They maintain habitat for flora and fauna. They help to maintain baseflow and seasonal flow in the RPW and downstream reaches. Part of this tributary is heavily vegetated, which catches sediments and other pollutants and allows them to drop out of the water column. The plants absorb the pollutants, improving water quality. The wetlands and waters provide habitat and a food source for reptiles and amphibians, as well as allowing the breakdown of organic matter for distribution to the downstream food chain.

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE:**1. TNWs and Adjacent Wetlands:**

Not Applicable.

2. RPWs that flow directly or indirectly into TNWs:

Wetland Name	Flow	Explain
2008-707 125 Lewis stream	SEASONAL	water present in spring. Not marked as a blue line on uad, but obvious from topo lines.

Provide estimates for jurisdictional waters in the review area:

Wetland Name	Type	Size (Linear)	Size (Area)
2008-707 125 Lewis stream	Relatively Permanent Waters (RPWs) that flow directly or indirectly into TNWs	60.96	-

Total:		60.96	0
--------	--	-------	---

3. Non-RPWs that flow directly or indirectly into TNWs:⁸

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

4. Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.

Wetland Name	Flow	Explain
2008-707 125 Lewis PFO Wets	SEASONAL	seasonally saturated wetlands in floodplain of tributary.

Provide acreage estimates for jurisdictional wetlands in the review area:

Wetland Name	Type	Size (Linear)	Size (Area)
2008-707 125 Lewis PFO Wets	Wetlands directly abutting RPWs that flow directly or indirectly into TNWs	-	2023.428
Total:		0	2023.428

5. Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs:

Not Applicable.

Provide acreage estimates for jurisdictional wetlands in the review area:

Not Applicable.

6. Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs:

Not Applicable.

Provide estimates for jurisdictional wetlands in the review area:

Not Applicable.

7. Impoundments of jurisdictional waters:⁹

Not Applicable.

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS:¹⁰

Not Applicable.

Identify water body and summarize rationale supporting determination:

Not Applicable.

Provide estimates for jurisdictional waters in the review area:

Not Applicable.

F. NON-JURISDICTIONAL WATERS. INCLUDING WETLANDS

☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements:

☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce:

☐ Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR):

☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (Explain):

☐ Other (Explain):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (ie., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment:

Not Applicable.

Provide acreage estimates for non-jurisdictional waters in the review area, that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.

Not Applicable.

¹. Boxes checked below shall be supported by completing the appropriate sections in Section III below.

². For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least seasonally (e.g., typically 3 months).

³. Supporting documentation is presented in Section III.F.

⁴-Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵-Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶-A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷-Ibid.

⁸-See Footnote #3.

⁹ -To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰-Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.